IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 5283 OF 2004

Popat Dhana Khairnar & Ors. .. Petitioners.

vs.

State of Maharashtra

& Ors. .. Respondents.

Mr.P.M. Patil for petitioners.

Mr.P.M. Joshi for respondent no.5.

CORAM : A.P. SHAH &

S.U. KAMDAR, JJ.

DATE : 23rd September,2004

ORAL JUDGMENT (Per S.U. Kamdar, J.)

1. The present petition seeks to challenge the order dated 15.5.2004 by which the State Government in exercise of power conferred under the Provisions of the Maharashtra Agriculture Produce Marketing (Regulation) Act, 1963 has nominated various persons on a Managing Committee of market produce bifurcated committee being the Market Committees of Kelwan and Deola Taluka.

Some of the material facts, briefly stated are as under :-

2. In 1971 the original respondent no. 5, namely Kelwan Marketing Committee was established under the provisions of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, (hereinafter referred to as the 'Market Committee' Act, 1963. The said Committee had under its jurisdiction over 179 villages situated within the territorial limits of Kelwan Taluka in Nashik District. On 23.6.1999, the State Government issued a notification under the provisions of the Land Revenue Code, 1966 carving out a separate Taluka, namely Deola Taluka which originally formed part of Kelwan Taluka in Nasik District. The said newly formed Deola Taluka was constituted by creating a jurisdiction over 29 villages from Kelwan, Taluka, 12 villages from Satana Taluka and 8 villages from Malegaon Taluka.

3. On 21.12.2001, a general election took place for the members of the managing committee of the 5th respondent. The petitioners along with various other persons were duly elected as the members of the managing committee of the said 5th respondent committee. Under the provisions of section 14 (3) of the said Market Committee Act, 1963, a tenure of five years is prescribed for the members of managing

committee.

4. On 22.1.2003, a notification was issued bifurcating the 5th respondent market committee. The said bifurcation was effected under the provisions of section 44 of the said Market Committee Act, 1963. The said bifurcation order dated 22.1.2003 came to be challenged by filing a writ petition in this Court being Writ Petition No. 843 of 2003. On 26.3.2003, this Court by an order and judgment quashed and set aside the said bifurcation order dated 2.1.2003 essentially on the ground that there was no effective consultation with the said marketing Board and the Marketing Committees which is mandatory under the provisions of Section 44 of the said Act.

5. On 13.12.2003, the respondent no. 1 State consulted and obtained views and opinion from respondent nos. 4 and 5 and ultimately passed a fresh resolution on 13.12.2003 once again resolving that the said division should be effected as both the respondent nos. 4 and 5 has no objection for the division for the bifurcation of the said 5th respondent Committee. On 1.3.2004, the respondent no. 4 passed a resolution opining that the respondent no. 5 committee may be divided into two committees one for the purposes of original respondent no.5 and another for operation in newly

carved out Deola Taluka.

6. On 15.5.2004 respondent no. 1 issued an order nominating various members on the managing committee for both Kalwan Market Managing Committee as well as newly formed Deola Market Managing Committee. On 18.5.2004, respondent no. 2 issued an order ordering the detailed steps for division of the 5th respondent committee.

7. According to the petitioners in such re-constitution of both the committees the State Government has removed 8 members of the original respondent no.5 committee who were duly elected and in their place another 8 members have been nominated as managing committee members. It is further case of the petitioners that out of the said 8 new members in fact four members are those members who were defeated in the very general election in which the petitioners were elected which was held on 21.12.2001. It has been further contended by the petitioners that while bifurcating the said committee, the respondent no. 1 has ignored the resolution of respondent nos. 4 and 5 which inter alia provided that the original respondent no. 5 committee should be bifurcated on the condition that the managing committee members of the said Committee only should be appointed on both the newly constituted Committee. It was therefore contended

that the non-compliance with the said condition indicates that there is infraction of the provisions of Section 44 of the said Market Committee Act, 1963. It has been thus further contended that there is no effective consultation by the Respondent No.1 as contemplated under Section 44 of the said Market Committee Act, 1963. The Petitioner has further argued that while bifurcating the committee under section 44, the original members must be retained and that the existing managing committee members only should be appointed on the newly constituted bifurcated committee. It has been urged by the learned counsel for the petitioners that the provisions of section 13 empowering the State Government to nominate the new members does not apply in so far as bifurcation of the existing committee is concerned and, therefore the order nominating new members on the newly formed committee is illegal, unlawful and without jurisdiction and, therefore, is liable to be quashed and set aside.

8. On the other hand, the learned counsel for the respondent State Government has filed an affidavit inter alia contending that there was a due process of consultation as required under section 44 of the Act and it is only after carrying out the consultation that the order dated 15.5.2004 came to be passed. It has been further contended that respondent nos. 4 and 5 are not entitled to put any

condition of continuing the existing managing committee members on the newly constituted bifurcated committees as alleged and, therefore, the State Government was within its jurisdiction to appoint new members under section 13 of the Market Committee Act, 1963. The respondent no. 2 has also filed an affidavit and reiterated the contentions of the State Government.

9. We have heard the learned counsel for the parties. The learned counsel for the petitioners has urged before us three points for our consideration. It has been contended firstly by the learned counsel for the petitioner that the power of nomination contained under section 13 of the Marketing Act, 1963 is only applicable to the newly appointed committees for the first time and has been wrongly applied to the committee which is bifurcated under section 44 of the said Act. Secondly, it has been urged by the learned counsel for the petitioner that in any event, the provision providing for consultation under section 44 of the Market Committee Act, 1963 includes consultation even for appointment of members of newly constituted managing committee members of both the market committees. And the last point argued by the petitioner is that in any event there is colourable exercise of power by the State Government in as much as the State Government has appointed defeated candidates who

were defeated in the election held on 21.12.2001 in place and stead of the duly elected members of the said original respondent no. 5 market committee.

10. We have considered the submission of the learned counsel for the petitioner and we do not find any merit therein. The first submission of the learned counsel for the petitioner that the provisions of sub section (1A) of section 13 applies only to the committee which is constituted for the first time and do not apply to the bifurcated committee under section 44 of the Act is concerned, we are not impressed with the said argument. The provisions of section 44 deals with the power of the State Government to amalgamate or divide or bifurcate one committee into two committees. The said provisions of section 44 read as under:-

> "44 (1): Where the State Government is satisfied that for securing efficient regulation of marketing of any agricultural produce in any market area, it is necessary that to or more Market Committees therein should be amalgamated or any Market Committee therein should be divided into two or more Market Committees, then the State Government may after consulting the Market Committees or Committee, as the case may be and (State Marketing Board) by notification

> in the Official Gazettee provide for the amalgamation or division of such Market Committees into a single Market Committee or into two or more Market Committees, for the market area in respect of the agricultural produce specified in the notifications with such constitution, property, rights, interests and authorities and such liabilities, duties and obligations (including provision in respect of contracts, assets, employees, proceedings and such incidental, consequential and supplementary matters as may be necessary to give effect to such amalgamation or as the case may be, the division) as may be specified in the notification."

11. On the plain reading of section 44 it is clear that once the committee is bifurcated in more than two committees then two independent committees comes into existence and the original committee does not in any manner continue to exist or survive. The said both the committees which are newly constituted are constituted for the first time and, therefore, in our view the provisions of Section (1A) of Section 13 would be applicable in as much as there will be a power in the State Government to nominate the fresh members as first time members of the new Committee which is constituted on bifurcation of the

old committee. Under the provision of sub-section (1A) of Section 13 the State nominated members holds the said positions for a limited period of two years and thereafter the members are to be regularly elected. In our view the provisions of section 13 (1A) will apply even in those cases where the Government has constituted either a new committee for the first time for an area or bifurcated an existing committee or amalgamated two existing committees. It is because in each of the said cases there will be a new entity constituted and once such new entity is constituted the power under sub-section (1A) of Section 13 of the said Market Committee Act, 1963 is available and the same can be exercised by the State Government for nomination of the new members of the managing committee.

12. The second contention of the learned counsel for the petitioner that there should be a consultation even for the nomination of the members of the newly constituted managing committee cannot be accepted. The provisions of section 13 (1A) do not contemplate any such consultation at all. The said provision of section 13 (1A) reads as under :-

> 13 (1): Subject to the provisions of sub-section (2), every Market Committee shall consist of the following :

(a) thirteen agriculturists- ten agriculturists residing in the market area (not being less than twenty-one years of age on the date specified from time to time by the Collector in this behalf) seven of whom shall be elected by members of the managing committees of the agricultural credit societies and multipurpose co-operative societies within the meaning of the Maharashtra Co-operative Societies Act, 1960 and the rules made thereunder functioning in the market area and three (of whom one shall be a person belonging to Scheduled Castes or Scheduled Tribes) shall be elected by members of village panchayats functioning therein."

13. On the contrary consultation is provided only under section 44 of the said Act. Section 44 requires consultation for bifurcation of the Committee and for an area of such bifurcated committee or area of such amalgamated committee. The provisions of Constitution under section 44 of the said Market Committee Act, 1963 cannot be made applicable to section 13 (1A) of the said Act. Once we hold that there is a power in the State to nominate the members for such bifurcated committee also under section (1A) of Section 13 of the said Act, then, obviously such power can be exercised by

the State Government without consulting the existing committee which is sought to be bifurcated. It is not permissible nor it is possible to read the provisions of section 44 providing for requirement of consultation within the provisions of section 13 (1A) of the said Marketing Act, 1963. In support of the aforesaid argument, the learned counsel for the petitioner has relied upon the judgment of this Court in the case of Appasaheb Sheshrao Chavan & Others. vs. State of Maharashtra & Others, reported in 2000(1) Bom.C.R. 657. We have perused the judgment. There is no dispute as to the proposition that before carrying out the bifurcation and/or amalgamation of the committee under section 44 of the said Market Committee Act, 1963 a consultation with the existing committee is necessary. However, the said judgment do not in any manner suggest that such consultation is even extended to the appointment and/or nomination of new members on the newly constituted committee. In our view therefore, the said judgment does not apply to the facts of the present case. In the present case, in fact the earlier order of bifurcation was set aside by this Court and the matter was remanded for consultation and subsequently a fresh order is passed after carrying out the necessary consultation. In view thereof, we are of the opinion that the aforesaid argument has no merit and accordingly the same is rejected.

14. This leads us to the last contention of the learned counsel for the petitioner that there is colourable exercise of power while appointing the said committee. We have considered this submission at some length. However, we find that there is no material whatsoever produced or relied upon by the learned counsel for the petitioner in support of the said argument. It is well settled that the contention that the exercise of power is colourable and/or malafide must have sufficient particulars and material in support thereof. The only argument advanced by the learned counsel for the petitioner is that because some of the members appointed on such newly appointed committee are defeated members therefore there is colourable exercise of power. We are not inclined to accept the aforesaid contention. It is because the power of the State Government under section 13(1A) cannot beheld to be exercised malafide or by way of colourable exercise of power merely on the ground that some of the members appointed are defeated candidates in the earlier election of the said Committee. While appointing the members on the newly constituted managing committee the State Government is required to take into consideration various aspects of the matter including functioning of the said Committee and relevance of a particular person as a member of the Managing Committee. If the State Government is of

the opinion that it is necessary in the interest of Market Committee to appoint a particular person as a member then even if they have lost earlier election of the Market Committee still it is permissible and open to the State Government to appoint such a person under the provisions of section 13(1A) of the said Act. It is impermissible for us to interfere in exercise of our Writ jurisdiction merely because the defeated candidates are appointed on the said bifurcated committee. It is also equally impermissible for us to infer from the appointment of defeated candidate that exercise of powers by the State Government is actuated by colourable and/or malafide intention on the part of State Government. We are afraid and in fact we are not inclined to accept such an argument on the part of the petitioner. We, accordingly reject the same.

. In the aforesaid circumstances, we do not find any merit in the present petition and thus dismiss the same. However, there shall be no order as to costs.

(A.P.SHAH, J)

(S.U.KAMDAR,J)